

Q. CONVENTION AND TRADE SHOW ACTIVITIES OF IRC 501(c)(5) AND 501(c)(6) ORGANIZATIONS

1. Introduction

IRC 513(d) was added to the Code by the Tax Reform Act of 1976. By virtue of this section most income from trade shows and suppliers' exhibits carried on by IRC 501(c)(5) and 501(c)(6) organizations was exempted from taxation as unrelated business taxable income.

2. Background

IRS policy before the passage of the 1976 Act was to treat income from a convention or trade show, including a supplier's exhibit, as related to the exempt purposes of the organization only if the show was conducted in a manner calculated to promote and stimulate interest in the industry's products in general and/or impart useful information to the members. In addition, no selling or order taking could be permitted at the show. The Service position was that the presence of selling or order taking changed the character of the show from that of an educational vehicle to that of a selling mart and, therefore, any amount of sales activity would result in income from the show being treated and taxed as unrelated business income. Rev. Rul. 67-296, 1967-2 C.B. 210 and Rev. Rul. 75-516 through 75-520, 1975-2 C.B. 220-226.

IRC 513(d) was a direct response to the Service position contained in the 1975 Rev. Ruls. The Committee Reports on P.L. 94-455 indicate that Congress thought the Service had gone too far in enforcing the unrelated business income tax provisions. One major purpose of these provisions was to insure that exempt organizations would not commercially exploit their exempt status by unfairly competing with taxable organizations. Congress felt that trade show activities, whether or not sales activities were included, were not in competition with the commercial activities of taxable organizations. It was felt that such activities were related to the purposes of the IRC 501(c)(5) or 501(c)(6) sponsoring organizations and such activities would and did promote and stimulate an interest in, and demand for, their industry's products in general. Such activities were also educational as members would be exposed to the new technology available to the trade.

3. Ambiguities in IRC 513(d)

IRC 513(d) encompasses two types of trade shows: the industry trade show and the supplier's exhibit. The industry trade show is one at which members of the industry join in the exhibition of their products for the purpose of promoting and stimulating interest in and demand for the products or services of that industry. The supplier's exhibit, on the other hand, is one at which exhibitors conduct displays that are designed to impart important and useful information to members of the sponsoring industry regarding their industry and new developments in technical and product aids. The purpose of this type of show is not to stimulate interest in the products of the members of the sponsoring industry.

IRC 513(d) defines "convention and trade show activity" as any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally as well as members of the public for the purpose of displaying industry products or stimulating interest in, and demand for, industry products or services, or educating persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry. Thus, this definition includes both industry shows and supplier's shows.

In the Congressional Record of September 16, 1976, Senator Talmadge stated and Senator Long agreed that both the industry show and the supplier show will be qualified trade shows within the meaning of IRC 513(d)(3)(B).

However, qualified convention and trade show activity is defined in the final version of the Code to provide that one of the purposes of sponsoring the show must be the promotion and stimulation of interest in, and demand for, the products and services of that industry in general. This definition seems to exclude suppliers' shows from the scope of the provisions, since they are not organized for that purpose.

Ambiguity also exists as to the treatment of sales activity under this provision. In the report of the Senate Finance Committee dated June 16, 1976, the Committee indicated that it did not feel that the activities described in TIR-1409, 1975-2 C.B. 220-226 (Rev. Ruls. 75-516 through 75-520), should be considered unrelated trade or business activities. (S. Report 94-938, Part I. p. 601.) Yet, IRC 513(d) is silent on the treatment of income from exhibits at which sales take place.

On December 9, 1980, proposed regulations were published in the Federal Register. A copy appears at the end of this article.

4. Proposed Regulations

The proposed regulations address specifically several of the ambiguities contained in the final Code section. Convention and trade show activity is broadly defined in proposed Reg. 1.513-3(c)(4) as any activity of a kind traditionally carried on at such shows. Proposed Reg. 1.513-(c)(2)(iii) indicates that a qualified trade show may promote and stimulate interest in, and demand for, the products and services of the industry of the members not only through the character of the exhibits but through the character of conferences and seminars held at the show as well. Thus, a supplier's show conducted in conjunction with such conferences and seminars would not generate unrelated business income. See proposed Reg. 1.513-3(e), Example 2.

To clarify the Service position on the treatment of sales activity, proposed Reg. 1.513-3(d) provides that selling will not result in unrelated business income provided the trade show is otherwise qualified under the Code and regulations.

5. The Requirement of Other Substantial Activities

Although the conduct of a qualified trade show is no longer considered unrelated business activity, a "qualifying organization" must have other exempt activities in order to qualify for exemption. IRC 513(d)(3)(C) defines the term "qualifying organization" as one described in IRC 501(c)(5) or 501(c)(6) which regularly conducts a qualified show as one of its substantial exempt purposes. This implies that there must be other substantial exempt purposes. This interpretation is supported by language in the report of the Conference Committee dated September 13, 1976, (H. Report 94-515 p. 523). At that time the Conference Committee deleted a provision which provided that exemption would not be affected because of qualified convention and trade show activity. See IRC 513(d)(4) for a similar provision, applicable to public entertainment activities that was not deleted. The deletion "insures that the union or trade association must have substantial exempt activities other than its conducting a convention or trade show." The determination of whether an organization has other substantial exempt purposes is, of course, a factual question and must be addressed on a case by case basis. Cases that present problems in this area should be referred to the National Office for Technical Advice.

6. Trade Show Activities Still Constitute Unrelated Trade or Business

Under IRC 513(d) not every trade show activity is excepted from the definition of unrelated business taxable income. If a trade show is conducted for a purpose or in a manner not described in IRC 513(d), the income from that activity would still be considered unrelated business taxable income. Income from a supplier's show not conducted as part of a qualified convention or trade show would still be unrelated business income. See Example 4 of proposed Reg. 1.513-3(e). In addition, current law would have no effect on the conclusion of Rev. Rul. 58-244, 1958-1 C.B. 242, which holds that the organization which conducted a trade show as its sole activity, is not entitled to exemption under IRC 501(c)(6).

On the other hand, IRC 513(d) liberalizes the law in this area considerably. If the proposed regulations become final without major change it will be fairly easy for an organization with other substantial IRC 501(c)(5) or 501(c)(6) activities to qualify for exemption and not be subject to the unrelated business income tax. Trade show activities (including selling activities) will qualify if one purpose of the show is the promotion and stimulation of interest in, and demand for, the products or services of the members' industry. Next, a supplier's exhibit will qualify (even if selling is permitted) if it is held in connection with a conference or meeting and that conference or meeting stimulates interest in and demand for the products of the members' industry. Once these trade show activities qualify under IRC 513(d) (but remember that there must be other substantial exempt activities for this to happen) they are treated as exempt activities under IRC 501(c)(5) or 501(6).

Based on the above, it is likely that many organizations formerly ineligible for exempt status because of trade show activities will now apply, and qualify, for exemption.

7. Effect of IRC 513(d) on Other IRC 501(c) Organizations

IRC 513(d) does not apply to organizations described in other paragraphs of 501(c), including 501(c)(3). Trade show activities conducted by these organizations should be analyzed based on Rev. Rul. 67-296 and Rev. Ruls. IRC 75-516 through 75-520. These Rev. Ruls. will be superseded when the 513(d) regulations are published in final form but another revenue ruling will be published at the same time applying the principles of those Rev. Ruls. to organizations exempt under the other paragraphs of 501(c).

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE**

26 CFR Part 1

[EE-55-78]

Income From Trade Shows

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the treatment of income from qualified trade shows sponsored by certain exempt organizations. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulation would provide the public with the guidance needed to comply with that Act and would affect certain exempt organizations that sponsor trade shows. The proposed regulation would also conform the regulations to changes in the tax law concerning the time for filing an exempt organization's income tax return.

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 9, 1981. The amendments are proposed to be effective for taxable years beginning after October 4, 1976, with respect to qualified convention and trade show activities. Changes concerning the time for filing income tax returns are proposed to be effective for taxable years beginning after November 10, 1978. Hearing-April 22

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T[EE-155-78], Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Joel E. Horowitz of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202-566-6212, not a toll-free call.)

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 513(d) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1305 of the Tax Reform Act of 1976 (90 Stat. 1716) and section 6 of the Act of

November 10, 1978 (Pub. L. 95-628, 92 Stat. 3630) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Prior Law

The unrelated business income tax is imposed on certain organizations described in sections 401(a) and 501(c) to ensure that an exempt organization can not exploit its status in commercial competition with nonexempt persons. Before passage of the Tax Reform Act of 1976, certain activities in connection with the operation of convention and trade shows were considered unrelated trade or business activities. Income from these activities, therefore, may have been includable in the unrelated business taxable income of the organization and thereby subject to the tax imposed by section 511(a).

Prior to passage of Pub. L. 95-628, exempt organizations were treated as domestic or foreign corporations for purposes of the time for filing income tax returns.

Present Provisions

Section 1305 of the Tax Reform Act of 1976 provides that qualified public entertainment activities and qualified convention and trade show activities, conducted regularly by specified exempt organizations, will not be considered unrelated trade or business. In order to receive such treatment under the regulations, the convention or trade show activity would have to be carried on by a qualifying organization described in section 513(d)(3)(C) and Section 1.513-3(c)(1) in conjunction with a convention, meeting or trade show that is sponsored by the qualifying organization and is described in section 513(d)(3)(B) and Section 1.513-3(c)(2).

As proposed, Section 1.513(b) states that convention and trade show activities (as defined in paragraph (c)(4)) which are carried on by organizations described in sections 501(c)(5) or (6) (such as labor organizations or business leagues), but which are not otherwise qualified under this section, will be considered unrelated trade or business. The proposed rules would result in exclusion of receipts derived from all traditional activities carried on at a qualified show from an organization's unrelated business taxable income.

Treas. Reg. Section 1.6072-2(c) is proposed to be amended to reflect the change in the time for filing an exempt organization's

tax return. An exempt organization must file its return on or before the fifteenth day of the fifth month following the close of its taxable year.

Comments and Requests for a Public Hearing

Before adopting this proposed regulation, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of this proposed regulation is Joel Horowitz of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. There is added immediately after Section 1.513-2 the following new section:

Section 1.513-3 Qualified convention and trade show activity.

(a) *Introduction*--(1) In general. Section 513(d) and Section 1.513-3(b) provide that convention and trade show activities carried on by a qualifying organization in connection with a qualified convention or trade show will not be treated as unrelated trade or business. Consequently, income from qualified convention and trade show activities, derived by a qualifying organization that sponsors the qualified convention or trade show, will not be subject to the tax imposed by section 511. Section 1.513-3(c) defines qualifying organizations and qualified conventions or trade shows. Section 1.513-3(d) concerns the treatment of income derived from certain activities, including rental of exhibition space

at a qualified convention or trade show where sales activity is permitted, and the treatment of supplier exhibits at qualified conventions and trade shows.

(2) *Effective date.* This section is effective for taxable years beginning after October 4, 1976.

(b) *Qualified activities not unrelated.* A convention or trade show activity, as defined in section 513(d)(3)(A) and Section 1.513-3(c)(4), will not be considered unrelated trade or business if it is conducted by a qualifying organization described in section 513(d)(3)(C) and Section 1.513-3(c)(1), in conjunction with a qualified convention or trade show, as defined in section 513(d)(3)(B) and Section 1.513-3(c)(2), sponsored by the qualifying organization. Such an activity is a qualified convention or trade show activity. A convention or trade show activity which is conducted by an organization described in section 501(c)(5) or (6), but which otherwise is not so qualified under this section, will be considered unrelated trade or business.

(c) *Definitions--(1) Qualifying organization.* Under section 513(d)(3)(C), a qualifying organization is one which--

(i) Is described in either section 501(c)(5) or (6), and

(ii) Regularly conducts as one of its substantial exempt purposes a qualified convention or trade show.

(2) *Qualified convention or trade show.* For purposes of this section, the term "qualified convention or trade show" means a show that meets the following requirements:

(i) It is conducted by a qualifying organization described in section 513(d)(3)(C);

(ii) At least one purpose of the sponsoring organization in conducting the show is the promotion and stimulation of interest in, and demand for, the products and services of the industry (or segment thereof) of the members of the qualifying organization; and

(iii) The show is designed to achieve that purpose through the character of a significant portion of the exhibits or the character of conferences and seminars held at a convention or meeting.

(3) *Show*. For purposes of this section, the term "show" includes an international, national, state, regional, or local convention, annual meeting or show.

(4) *Convention and trade show activity*. For purposes of this section, convention and trade show activity means any activity of a kind traditionally carried on at shows. It includes, but is not limited to--

(i) Activities designed to attract to the show members of the sponsoring organization, members of an industry in general, and members of the public, to view industry products or services and to stimulate interest in, and demand for such products and services;

(ii) Activities designed to educate persons in the industry about new products and services or new rules and regulations affecting the industry; and

(iii) Incidental activities, such as furnishing refreshments, of a kind traditionally carried on at such shows.

(d) *Certain activities--(1) Rental of exhibition space*. The rental of display space to exhibitors (including exhibitors who are suppliers) at a qualified trade show or at a qualified convention and trade show will not be considered unrelated trade or business even though the exhibitors who rent the space are permitted to sell or solicit orders.

(2) *Suppliers defined*. For purposes of subparagraph (1), a supplier's exhibit is one in which the exhibitor displays goods or services that are supplied to, rather than by, the members or the qualifying organization in the conduct of such members own trades or businesses. The purpose of the display must be to educate such members in the development of products and services or rules and regulations affecting the qualifying organization.

(e) *Example*. The provisions of this section may be illustrated by the following examples:

Example 1. X, an organization described in section 501(c)(6), was formed to promote the construction industry. Its membership is made up of manufacturers of heavy construction machinery many of whom own, rent, or lease one or more digital computers produced by various computer manufacturers. X is a qualifying organization under section 513(d)(3)(C) that regularly holds an annual meeting. At this meeting a national industry sales campaign and methods of consumer financing for heavy construction machinery are discussed. In addition,

new construction machinery developed for use in the industry is on display with representatives of the various manufacturers present to promote their machinery. Both members and nonmembers attend this portion of the conference. In addition, manufacturers of computers are present to educate X's members. While this aspect of the conference is a supplier exhibit (as defined in paragraph (d) of this section), income earned from such activity by X will not constitute unrelated business taxable income to X because the activity is conducted as part of a qualified trade show described in Section 1.513-3(c).

Example 2. Assume the same facts as in Example 1, but the only goods or services displayed are those of suppliers, the computer manufacturers. Selling and order taking are permitted. No member exhibits are maintained. Standing alone, this supplier exhibit (as defined in paragraph (d)(2) of this section) would constitute a supplier show and not a qualified convention or trade show. In this situation, however, the rental of exhibition space to suppliers is not unrelated trade or business. It is conducted by a qualifying organization in conjunction with a qualified convention or trade show. The show (the annual meeting) is a qualified convention or trade show because one of its purposes is the promotion and stimulation of interest in, and demand for, the products of the industry through the character of the annual meeting. Example 3. Y is an organization described in section 501(c)(6). The organization conducts an annual show at which its members exhibit their products and services in order to promote public interest in the line of business. Potential customers are invited to the show and sales and order taking are permitted. The organization secures the exhibition facility, undertakes the planning and direction of the show, and maintains exhibits designed to promote the line of business in general. The show is a qualified convention or trade show described in paragraph (c)(2) of this section. The provision of exhibition space to individual members is a qualified trade show activity, and is not unrelated trade or business.

Example 4. Z is a qualifying organization described in paragraph (c)(1) of this section that sponsors an annual show. As the sole activity at the show, suppliers to the members of Z exhibit their products and services. Selling and order taking is permitted. The show is a supplier show and is not a qualified convention or trade show described in paragraph (c)(2). Thus, the organization's provision of exhibition space is not a qualified convention and trade show activity. Income derived from rentals of exhibition space to suppliers will be unrelated business taxable income under section 512.

Par. 2. Section 1.6072-2 is amended by revising paragraph (c) to read as follows:

Section 1.6072-2 Time for filing returns of corporations.

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(c) *Exempt organizations.* For taxable years beginning after November 10, 1978, the income tax return required under section 6012 and 1.6012-2(e) of an organization exempt from taxation under section 501(a) (other than an employee's trust under section 401(a)) shall be filed on or before the fifteenth day of the fifth month following the close of the organization's taxable year.

William E. Williams.

Acting Commissioner of Internal Revenue.

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